

**DECISION OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY**

7 April 2017

Application to intervene

(Interest in the result of the case – Addressee of the Contested Decision)

Case number	A-014-2016
Language of the case	English
Appellant	Solvay Solutions UK Limited, United Kingdom
Representative	Koen van Maldegem Fieldfisher LLP, Belgium
Contested Decision	DSH-63-3-D-0020-2016 of 14 November 2016 adopted by the European Chemicals Agency pursuant to Article 63(3) of Regulation (EC) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1; hereinafter the 'BPR')
Applicant	Dow Benelux B.V., the Netherlands
Representative	Darren Abrahams and Indiana de Seze Steptoe & Johnson LLP, Belgium

THE BOARD OF APPEAL

composed of Mercedes Ortuño (Chairman), Andrew Fasey (Technically Qualified Member) and Sari Haukka (Legally Qualified Member and Rapporteur)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 14 November 2016, the European Chemicals Agency (hereinafter the 'Agency') adopted the Contested Decision granting Dow Benelux B.V. (hereinafter the 'Applicant') permission to refer to certain studies owned by the Appellant on the biocidal active substance tetrakis(hydroxymethyl)phosphonium sulphate (2:1) (EC No 259-709-0). The Applicant and the Appellant are the parties to the data sharing dispute which is the subject of the Contested Decision.
2. On 16 December 2016, the Appellant lodged an appeal at the Registry of the Board of Appeal against the Contested Decision which was addressed to the Applicant.
3. On 21 February 2017, an announcement was published on the Agency's website in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.5.2016, p. 4; hereinafter the 'Rules of Procedure').
4. On 14 March 2017, the Applicant applied for leave to intervene in these proceedings in support of the Agency.
5. The Applicant claims in particular that it has a direct interest in the result of the case as the Contested Decision grants it permission to refer to certain of the Appellant's studies in the context of an application to be included on the list of suppliers of active substances and biocidal products maintained by the Agency pursuant to Article 95 of the BPR.
6. On 21 and 30 March 2017, respectively, the Appellant and the Agency informed the Board of Appeal that they raise no objections to the application to intervene.

Reasons

7. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case submitted to the Board of Appeal may intervene in the proceedings before the Board of Appeal.
8. Article 8(2) of the Rules of Procedure further provides that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within three weeks of publication of the announcement of the notice of appeal on the Agency's website. Furthermore, pursuant to Article 8(3), the application must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) lists the information the application shall contain.
9. Since the application complies with Article 8(2), (3) and (4) of the Rules of Procedure, the Board of Appeal shall examine whether the application also complies with Article 8(1) of the Rules of Procedure, in other words whether the Applicant has established an interest in the result of the present case.
10. As the addressee of the Contested Decision, the Applicant clearly has an interest in the result of the case submitted to the Board of Appeal as required by Article 8(1) of the Rules of Procedure. The application to intervene submitted by the Applicant must therefore be granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by Dow Benelux B.V. in Case A-014-2016 in support of the Agency.**
- 2. Instructs the Registrar to arrange for copies of the non-confidential versions of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. Allows Dow Benelux B.V. a period of one month, following the serving of the Notice of Appeal and the Defence, to lodge a statement in intervention.**

Mercedes Ortuño
Chairman of the Board of Appeal

Marc Goodacre
on behalf of Alen Močilnikar
Registrar of the Board of Appeal